

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4066 of 2004

Mr.Uday Warunjikar for the Petitioner.

Mrs.Lata Desai i/b Mrs.S.U.Deshmukh for Respondents
Nos. 1 to 4.

Office Notes, Office
Memoranda of Coram,
appearances, Court's
order or directions

Court's or Judge's
orders

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CORAM: D.K.DESHMUKH, J.

DATED: 17TH AUGUST, 2005

P.C.:

1. Rule. Returnable forthwith.
Heard finally by consent of parties.

2. By the order impugned the application for amendment in the plaint has been rejected by the trial court. The sole reason given in the order for rejecting the application is that in the plaint the subject matter of the suit was southern wall and now by the amendment damages to the northern

wall are being claimed. Northern wall, according to the trial court, was not the subject matter of the suit. In my opinion, even assuming that the northern wall was not the subject matter of the suit, I do not find any prohibition contained in any law preventing the Plaintiff from including any subject matter in the suit. In my opinion, the Plaintiff is entitled to claim reliefs in his plaint and make pleadings. Really speaking, in my opinion, the amendment was sought by the Plaintiff in the plaint because of the events taking place during the pendency of the proceedings. They related to the controversy in the suit. Perusal of the provisions of Rule 1 of Order II shows that the duty is cast on the Plaintiff to frame his suit in such a manner so that the final decision upon the subject in dispute can be arrived at and further litigation on the same subject between the same parties is prevented. If this is the mandate of the Civil Procedure Code, in my opinion, the court was not justified in preventing the Plaintiff from

including pleadings in his complaint, which were necessitated because of the events taking place during the pendency of proceedings.

3. Taking overall view of the matter, therefore, in my opinion, the order impugned is liable to be set aside.

4. In the result, therefore, petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (a). No order as to costs.

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